

Message Text

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ACTION NEA-10

INFO OCT-01 ISO-00 EB-07 /018 W

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P R 141040Z AUG 75

FM AMEMBASSY DAMASCUS

TO USDOC WASHDC PRIORITY

INFO SECSTATE WASHDC 4262

AMEMBASSY JIDDA

AMEMBASSY TEHRAN

AMEMBASSY BERN

UNCLAS DAMASCUS 3114

USDOC FOR ED CHAPMAN/SUPPORT SERVICES OIM/BIC AND PETER HALE/
CAGNE/OIB/BIC

JIDDA FOR CONTRACTING OFFICER AND B&F

TEHRAN FOR HAROLD BROMEL DIRECTOR: U.S. EXHIBITION AGWA-FOOD

BERN FOR ROBERT CULVER DIRECTOR: U.S. EXHIBITION NUCLEX

EO 11652: N/A

TAGS: BEXP, SY, IR, SA

SUBJECT: JOINT CONSTRUCTION CONTRACT - DAMASCUS, TEHRAN, JIDDA

1. ADMINISTRATIVE COUNSELLOR AND KIRCHSCHLATER DISCUSSED
SUBSTANCE TELCON CHAPMAN/KIRCHSCHLAGER AUGUST 13 AND JOINTLY
AND CAREFULLY REVIEWED SUBJECT CONTRACT WITH PARTICULAR
EMPHASIS TO PAGE 3 CANCELLATION PROVISIONS. NO LEGAL
COUSEL AVAILABLE SO FINDINGS BASED ON THEIR INTERPRETATION
OF CONTRACT AND PRACTICAL IMPLICATIONS.

2. CONTRACT DOES NOT CLEARLY PERMIT ALTERNATIVE ONE CANCEL-
LATION FOR CONVENIENCE AS THAT OPTION DIRECTLY RELATED TO
FORCE MAJEURE SITUATION. IF THAT ALTERNATIVE WERE USED THE
COMPLICATIONS IMPLICIT IN ATTEMPTING TO ESTABLISH AMONG
OTHER THINGS A) COST OF MATERIALS ALREADY PREPARED FOR
TEHRAN; B) RETURN FREIGHT TO GENEVA FOR WHICH WE HAVE
NO COPY OF CONTRACT WITH AMERICAN EXPORT AND OUT
INVOLVEMENT IN CANCELLATION THAT AGREEMENT WHICH INCLUDES SHIP-
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MENT TO DAMASCUS THEN TEHRAN AND RETURN TO GENEVA AS ONE

PACKAGE: AND C) COST OF SYSTEM STORAGE IN DAMASCUS UNTIL LEGALLY CLEAR WHO IS HANDLING RETURN SUGGEST PROBLEMS OF SUCH SCOPE AND ATTENDANT COSTS AS TO MAKE IT IMPRACTICAL. THIS WOULD ALSO INVOLVE SUB-CONTRACTING RELATIONSHIP FOCO - YACOUBIAN WHICH IS OBVIOUSLY DELICATE.

3. CANCELLATION FOR CAUSE WHICH IS ALTERNATIVE TWO RAISES QUESTION OF LEGAL INTERPRETATION AND JURIDICATION WHICH MUST BE AVOIDED IF POSSIBLE. REASONS STATED IN TELCON ARE VALID IN TERMS OF HAVING COMPLICATED OUR CONSTRUCTION BUT LEGAL DEFENSIBILITY IS QUESTIONABLE. FOR SHORTAGE OF ELECTRICALS FOCO CAN AGREE TO CREDIT US FOR DIFFERENCE AT UNIT COSTS PRICES. THE QUESTION OF SUPPLYING A QUALIFIED ELECTRICIAN IS AT LEAST PARTIALLY SATISFIED BY YACOUBIAN SUB-CONTRACT AND NONE OF OUR CONTRACTS SPECIFY ELECTRICIAN MUST BE EMPLOYEE OF PRIME CONTRACTOR. ALTHOUGH START OF CONSTRUCTION WAS DELAYED OUR CONTRACT IMPOSES PENALTY FOR NON-COMPLETION ONLY AND THIS WAS MIRACULOUSLY ACHIEVED. JOSEPH INSISTS OCEAN SHIPMENT VERSUS AIR WAS DISCUSSED WITH NYSO. ADEQUATE CLEAN-UP CREW IS ANOTHER GREY AREA IF IT NECESSITATES LEGAL PROFF. ALL THESE SPECIFIC CHARGES REMAIN TRUE BUT THE ULTIMATE INTERPRETATION IN STRICT LEGAL TERMS WOULD IT IS FELT BE BASED ON WHETHER OR NOT EXHIBITION STARTED ON TIME.

4. REFERRING TO PARA 2 & 3 THIS MESSAGE THERE IS ABSOLUTELY NO DOUBT JOSEPH WOULD GO TO COURT IF CANCELLATION IS PREDICATED ON CONVENIENCE OR CAUSE. THE POSSIBILITY OF UNFAVORABLE LEGAL INTERPRETATION IN ADDITION TO THE BROADER IMPLICATIONS OF COURT ACTION WHETHER WE WIN OR NOT STRONGLY AUGURS AGAINST THESE ALTERNATIVES.

5. ALTERNATIVE THREE HAS BEEN EXERCISED WITH RESPECT TO JIDDA. FOCO HAS BEEN ADVISED BY IMMEDIATE CABLE SECSTATE PASS TO FOCO INTERNATIONAL OF CANCELLATION THAT PORTION OF CONTRACT. RATIONAL WAS FORCE MAJEURE CLAUSE AND DELAY THAT EVENT BY MORE THAN SIX MONTHS FROM ORIGINAL DATE OF OCTOBER 25, 1975. AMEMBASSY UNCLASSIFIED

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JIDDA ALSO INSTRUCTED BY IMMEDIATE CABLE TO WITHHOLD INITIAL PAYMENT ON CONTRACT SCHEDULED FOR AUGUST 14. COPIES BOTH CABLES SENT IMMEDIATE INFORMATION TO YOU.

6. KIRCHSCHLAGER SCHEDULED FOR TEHRAN EVENT AS DMA AND CONFIDENT HE CAN EASILY THROUGH BROMEL EXERCISE PROPER CONTROL OF FOCO TO PREVENT REPEAT OF DAMASCUS EXPERIENCE. FURTHER HE IS CONVINCED FOCO WILL IN

THIS INSTANCE OVER -COMPLY WITH THE CONTRACT TO COMPENSATE FOR DAMASCUS. THE QUESTION OF TIMING AND THE INTER-RELATIONSHIP OF DAMASCUS AND TEHRAN ON COSTS AND SHIPMENT IS SO COMPLEX THAT AS A MATTER OF EXPEDIENCY AND PRACTICAL BUSINESS SENSE THE ONLY CERTAIN LOSER BY CANCELLING THE TEHRAN PORTION WOULD BE OURSELVES.

7. KIRCHSCHLAGER REQUESTS TRAVEL ORDER BE CUT TO PERMIT OPTION OF LEAVING DAMASCUS ON SEPTEMBER 10 AS ONLY DIRECT FLIGHT DAMASCUS TEHRAN IS WEDNESDAY VIA PANAM. WILL WRAP-UP DAMASCUS BUT EARLIER ARRIVAL COULD HELP BROMEL AT CRITICAL STAGE.

8. CONTRACTS WERE ORIGINALLY MAILED TO FOCO VIA USDOC TO PERMIT OUR STAFF FINAL REVIEW PRIOR TO JOSEPH SIGNING. CONTRACTS WERE EVOLUTION OF THE ORIGINAL LETTER OF INTENT AND ANYONE INVOLVED IN THOSE NEGOTIATIONS WILL RECALL THE COMPLEXITY OF TRYING TO JOIN THREE ESSENTIALLY DIFFERENT EVENTS IN ONE DOCUMENT AND THE MYRIAD POINTS OF VIEW ON IF IT SHOULD IN FACT BE ONE CONTRACT SIGNED IN DAMASCUS OR THREE CONTRACTS SIGNED IN EACH OF THE DIFFERENT VENUES. THERE WAS NO UNANIMITY OF OPINION AND AGAIN UNDER THE PRESSURE OF TIME THE HALF-DECISION WAS CABLED TO THE CONTRACTING OFFICER DAMASCUS, STATE 092309.

9. REQUEST USDOC COVER ALL DETAILS DAMASCUS 2920 PARA 6, 3010 IN ENTIRETY AND 3069 PARA 4, WITH FOCO IN AUGUST 18 MEETING OR PRIOR. ONLY POSSIBLE AREA OF DIFFERENCE MY FOCO AIDE-MEMOIRE WOULD BE TWO ADDENDUM ITEMS WHICH ARE DATED AND WERE ADDED AFTER OUR MEETING.

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